LIBRARY
SUPREME COURT, U. S.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-200

Supreme Court, U.S.
FILED
JUL 9 1971
E. ROBERT SEAVER, CLERK

EARNESTINE KING, on her own behalf and on behalf of all others similarly situated,

Plaintiff-Respondent,

—against—

THE NEW ROCHELLE MUNICIPAL HOUSING AUTHORITY, ELLSWORTH WRIGHT, in his capacity as Chairman of the New Rochelle Municipal Housing Authority, and CHARLES J. URSTADT, in his capacity as Commissioner of the New York State Division of Housing and Community Renewal,

Defendants-Appellants.

GERTRUDE FRAZIER, on her own behalf and on behalf of all others similarly situated,

Plaintiff-Respondent.

—against—

THE NEW ROCHELLE MUNICIPAL HOUSING AUTHORITY, ELLSWORTH WRIGHT, in his capacity as Chairman of the New Rochelle Municipal Housing Authority, and CHARLES J. URSTADT, in his capacity as Commissioner of the New York State Division of Housing and Community Renewal,

Defendants-Appellants.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

RICHARD L. BALTIMORE, JR.,
Counsel for the New Rochelle Municipal Housing Authority and Ellsworth Wright
299 Broadway
New York, New York 10007
(212) 233-8344

To:

The Legal Aid Society of Westchester County
Martin A. Schwartz, Of Counsel
Victor J. Rubino, Of Counsel
Attorneys for Plaintiffs
Office & P. O. Address
56 Grand Street
White Plains, New York 10601
(914)—RO 1-9200

TABLE OF CONTENTS

	PAGE
Opinion Below	2
Jurisdiction	2
Questions Presented	2
Statement	3
Reasons for Allowance of Writ	5
1. The decision below constitutes a significant misapplication of the prior decisions of this Court	5
2. The abolition of the distinction between interstate and intrastate travel is the making of entirely new law unsupported by any decision of this Court	7
3. The applicable standard against which the regulation must be judged is the traditional equal protection test	8
CONCLUSION	13
APPENDIX A	
Decision of the U.S. Court of Appeals for the Second Circuit	1a
APPENDIX B	
Relevant Statutes	9a
APPENDIX C	
Decision by Wyatt, *D.J.*, in *King* Case	12a
APPENDIX D	
Judgment and Order by Wyatt, *D.J.*, in *King* Case	20a

PAGE

APPENDIX E

Notice of Appeal in *King* Case 23a

APPENDIX F

Decision by Wyatt, *D.J.*, in *Frazier* Case 25a

APPENDIX G

Judgment and Order by Wyatt, *D.J.*, in *Frazier* Case 27a

APPENDIX H

Notice of Appeal in *Frazier* Case 30a

CASES CITED

Cole v. *Housing Authority of the City of Newport*, — F.2d — (1st Cir. 1970) 2

Dandridge v. *Williams*, 397 U.S. 471 (1970) 8

Evans v. *Cornman*, 398 U.S. 419 (1970) 6

Kent v. *Dulles*, 357 U.S. 116 (1958) 7

Lane v. *McGarry*, 320 F. Supp. 562 (1970) 6

Shapiro v. *Thompson*, 394 U.S. 618 (1969) 2

STATUTE CITED

Resolution of the New Rochelle Municipal Housing Authority 9a

ARTICLE CITED

Lansing & Mueller "The Geographic Mobility of Labor" (1967) 6

IN THE

Supreme Court of the United States

OCTOBER TERM, 1971

No. .....

EARNESTINE KING, on her own behalf and on behalf of all others similarly situated,

Plaintiff-Respondent,

—against—

THE NEW ROCHELLE MUNICIPAL HOUSING AUTHORITY, ELLSWORTH WRIGHT, in his capacity as Chairman of the New Rochelle Municipal Housing Authority, and CHARLES J. URSTADT, in his capacity as Commissioner of the New York State Division of Housing and Community Renewal,

Defendants-Appellants.

GERTRUDE FRAZIER, on her own behalf and on behalf of all others similarly situated,

Plaintiff-Respondent.

—against—

THE NEW ROCHELLE MUNICIPAL HOUSING AUTHORITY, ELLSWORTH WRIGHT, in his capacity as Chairman of the New Rochelle Municipal Housing Authority, and CHARLES J. URSTADT, in his capacity as Commissioner of the New York State Division of Housing and Community Renewal,

Defendants-Appellants.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

TO THE HONORABLE CHIEF JUSTICE OF THE UNITED STATES AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Petitioner prays for writ of certiorari to review the judgment and decree of the United States Court of Appeals for the Second Circuit entered in this cause on May 12, 1971.

Opinion Below

The opinion of the Court below is not yet reported and is appended hereto *infra* as Appendix A.

Jurisdiction

Jurisdiction of this Court is invoked pursuant to Title 28, U.S. Code, ¶ 1254(1). The decree of the Court of Appeals was entered on May 12, 1971 affirming the decision of the United States District Court for the Southern District of New York, Wyatt, *J.*, holding unconstitutional a five year durational residency requirement for admission to public housing and granting plaintiffs' prayers for injunctive and a declaratory relief.

Questions Presented

1. Whether the decision in *Shapiro* v. *Thompson*, 394 U.S. 618 (1969) makes it "constitutionally impermissible" to establish a durational residency requirement for public housing applicants.

2. Whether the impact of the classification on the right to travel under a residence requirement must be substantial.

3. Whether there is a distinction between interstate and intrastate travel.

4. Whether *Cole* v. *Housing Authority of the City of Newport*, — F.2d — (1st Cir. 1970) is in any respect distinguishable.

Statement

The cases were tried on stipulations of fact. The facts are succinctly set forth in Judge Wyatt's decision and are adopted for the purposes of this brief as follows:

Plaintiff King was born in Martinsville, Virginia, on January 5, 1942. In 1943, she moved to North Carolina where she resided until June, 1965. In the middle of June, 1965, she moved to New Rochelle in order to be with her mother, who was undergoing an operation, and in hope of obtaining employment.

Plaintiff King has resided in New Rochelle continuously since the middle of June, 1965. She presently resides at 140 Remington Place, New Rochelle, with her three year old son. She is presently employed as a typist by the New York State Department of Taxation and Finance. In addition to her salary, she receives a grant of partial assistance of $142.90 per month.

On February 27, 1970, plaintiff King telephoned the Authority in order to obtain an application for admission to the public housing maintained by the Authority. An employee of the Authority told her that she could not be given an application because she had not been a resident of New Rochelle for five years.

On March 2, 1970, plaintiff King went personally to the Authority's office and requested an application for public housing. This application was denied, because she had not been a resident of New Rochelle for five years.

Plaintiff Dorothy Green was born in Sumter, South Carolina, on December 23, 1941. In 1955 she moved to White Plains, New York, in the hope of finding employment and of going to school.

In the fall of 1967, plaintiff Green moved to New Rochelle and has resided there continuously since then. She presently resides at 488 North Avenue with her two children, aged two years and eight months, respectively. She receives a public assistance grant of $170 per month. This constitutes the only income for plaintiff and her children.

In the summer of 1969, plaintiff Green went to the office of the Authority and requested an application for public housing. The request for an application was denied because she had not been a resident of New Rochelle for five years.

On March 18, 1970, plaintiff Green again requested an application for public housing from the Authority. This request was denied, because she had not been a resident of New Rochelle for five years.

Public housing facilities built by the Authority were built with money borrowed from the State of New York, through the New York State Division of Housing and Community Renewal (Public Housing Law § 70). The Authority receives a subsidy from the State (Public Housing Law § 73) and from the City of New Rochelle (Public Housing Law § 94). The Authority receives no funds from the federal government.

The housing provided by the Authority is insufficient to meet the demand by residents of New Rochelle. There is presently a waiting list of such length that persons with families of plaintiffs' size whose applications are accepted will have to wait three years before an apartment becomes available.

Plaintiff Frazier was born in Yonkers, New York, and moved with her family to New Rochelle in June, 1968.

She presently resides at 34 Sickles Avenue, New Rochelle, with her five children.

In September, 1968, plaintiff Frazier obtained an application, but this application was denied early in 1969 because plaintiff had not been a New Rochelle resident for five years.

In the summer of 1968, plaintiff Frazier was three times refused an application for public housing maintained by the Authority because she had not resided in New Rochelle for five years.

REASONS FOR ALLOWANCE OF WRIT

1. The decision below constitutes a significant misapplication of the prior decisions of this Court.

In ruling that *Shapiro* v. *Thompson*, 394 U.S. 618 (1969) makes it "constitutionally impermissible" to establish a residence requirement for public housing applicants which would give preference to those whose jobs or present life patterns bind them to the community, the court below distorted and misapplied this Court's rationale in *Shapiro*. Some Circuit and District Courts have construed this Court's holding as interdicting all residency requirements, although it was stated in *Shapiro* that no view was implied as the validity of a waiting period (1) where no impact on interstate travel resulted or (2) where compelling state interests support the requirement. Both the factors cited by this Court as placing a residence rule outside *Shapiro's* ambit are present in the case at bar.

In the context of a welfare application, this Court reasoned that an indigent who desired to migrate might hesitate to risk making the move if he knew he had no chance to obtain prompt public assistance if job opportunities failed to materialize. Thus, the issue was whether

the migrant could obtain money for food, shelter and clothing when he came into the state or would be bereft of such protection for an extended period. By contrast, however, New Rochelle's public housing residence requirement can have no impact on the right to travel, since the availability of public housing cannot possibly be a factor in any decision to migrate or resettle. The average number of years an applicant must be on the waiting list in New Rochelle is three years for a two bedroom apartment and ten years for a three bedrom apartment. This is true even at the present time for residents, *without* the addition of non-residents to the enormous waiting list. Thus, quite apart from New Rochelle's residence regulation, it would be misleading indeed to hold up a false promise to newcomers in the community that they could have the slightest expectation of moving into public housing in their early years of residency.

The Court in *Lane* v. *McGarry*, 320 F. Supp. 562 at page 564 recognized that in disposing of a claim of infringement on the right to travel identical to the one made herein:

> "The insubstantiality of the impact of the classification on the right to travel is a factor to be considered in determining whether that right is being penalized. See *Shapiro* v. *Thompson*, 394 U.S. at 652, 89 S. Ct., 1322, Warren, C.J., dissenting. To construe the impact of the resolution in issue here as anything other than insubstantial is fanciful and 'far more theoretical than real'." * * * Cf. *Evans* v. *Cornman*, 398 U.S. 419 (1970).*

---

* Indeed, a scholarly study, Lansing & Mueller, "The Geographic Mobility of Labor" (1967), concludes that people move to other cities for family reasons, because of job opportunities and on other grounds; obtaining improved housing is not listed as a statistically significant factor (pp. 77, 85-88, 134-135, 139, 193-194, 222).

The court below did not meet this point, but merely commented that the additional waiting period was a "penalty" and therefore invalid. Yet it is obvious that not every regulation which has some connection with travel must rise to constitutional status. This Court made clear in *Shapiro* that only those requirements which produce a chilling effect on the right to travel would be constitutionally infirm in the absence of a compelling state interest. No such effect can be found here.

2. The abolition of the distinction between interstate and intrastate travel is the making of entirely new law unsupported by any decision of this Court.

The Circuit Court further held that there is no distinction between interstate and intrastate travel.* Yet this Court specifically referred in *Shapiro* to "the constitutional right of *interstate* travel" (Emphasis added). 394 U.S. at 638, footnote 21. Indeed, this Court has never held that local provisions claimed to be affecting travel from city to city raise a federal question or confer federal jurisdiction. *Shapiro* and *Kent* v. *Dulles,* 357 U.S. 116 (1958), relied on by the court below to support its novel ruling, deal with interstate and foreign travel.

The facts in the Frazier case differ from those in the King case in that there is no question of interstate travel which can be raised. Respondent Frazier, at all times, was a resident of the State of New York and even a recipient of public housing in the City of Yonkers.

---

* Plaintiff Frazier had been living in a public housing project in Yonkers, New York, before moving to New Rochelle. Several months after commencement of her action, her counsel filed a complaint on behalf of Plaintiff King, who had moved from North Carolina. Plaintiff Green, who had come from White Plains, New York to New Rochelle, subsequently intervened.

This Court has not, to our knowledge, equated intrastate travel with interstate travel. Such a holding would decimate states' rights and should such a finding be desirable, it would be the function of Congress and not of the courts.

While there are cases which may hold that where both intrastate and interstate travel are affected, the laws pertaining to interstate travel take precedence, the decision of the court here is the first finding we have been able to discover that the distinction between intrastate and interstate travel is erased. The lower court, in its finding of facts pursuant to the stipulation, found only an intrastate question had been raised, but still found that "for the reasons given in the opinion being filed today in the King action, it is concluded that the Authority's five-year residence requirement is unconstitutional."

So important a change in the law cannot be justified upon the facts of these cases.

3. The applicable Standard against which the Regulation must be judged is the traditional Equal Protection Test.

Since the regulation at issue does not unreasonably burden or restrict interstate movement, the applicable standard which New Rochelle must meet to support its classification is the traditional equal protection test. *Lane* v. *McGarry, supra.* As this Court said in *Dandridge* v. *Williams,* 397 U.S. 471, 485 (1970), which also involved "an area of economic and social welfare":

> ". . . a State does not violate the Equal Protection Clause merely because the classifications made by its laws are imperfect. If the classification has some 'reasonable basis,' it does not offend the Constitution simply because the classification 'is not

made with mathematical nicety or because in practice it results in some equality. . . .' A statutory discrimination will not be set aside if any state of facts reasonably may be conceived to justify it."

Certainly such a "state of facts" may not only be conceived, but presently exists in New Rochelle. The number of public housing units available in New Rochelle is grossly inadequate to renew blighted areas or to serve community needs. The effect of local residence rules is to give preference to those whose employment or children's schooling bind them to the community, but not to exclude new residents. Without such a preference, such persons would be placed so low on overcrowded waiting lists that they would be forced to move elsewhere because of lack of suitable housing. This reasoning was quoted and adopted in *Lane* v *McGarry, supra,* the District Court ruling that the classification "has a reasonable basis, and consequently is constitutionally valid."

The court below entirely failed to deal with this fact, although it acknowledged in a footnote that this was "the main thrust of the Authority's argument" (ftn. 6). Indeed, its erroneous conception of the issue is illustrated by its reference to *Cole* v. *Housing Authority of the City of New York,* .....F.2d ..... (1st Cir. 1970), affirming 312 F.Supp. 692 (D.R.I., 1970), which it called *"in all respects indistinguishable from the instant case* (.....) (emphasis added). *Cole* is unlike the case at bar in the most crucial aspect present—the fact that the waiting period for public housing there was *3 months*, whereas in New Rochelle the period is three to ten *years* (without any non-residents on the list).

This Court, in the *Shapiro* case, admittedly expressed no view as to the validity of residence requirements other than for welfare benefits.

The Court below misinterpreted the use of the word "shelter" by this Court at page 627. What this Court said was: "On the basis of this sole difference, the first class is granted and the second class is *denied* welfare aid upon which *may depend* ability of families to obtain the very means to subsist—food, shelter and *other necessities of* life" (emphasis supplied).

It is clear that the Court was not adding shelter to the welfare benefits but only illustrating some of the possible uses of welfare funds. This is evident because shelter is combined with "other necessities of life". If the lower Court's interpretation is right, every necessity of life would stand on the same footing as welfare aid, which would include furniture, clothing, recreation, reading material, etc. and there would have been no need for making any distinction but simply to refer to "necessities of life."

The rationale of this Court's decision in Shapiro was that it found as a fact, and the three jurisdictions involved affirmatively stated, that the waiting period was designed to inhibit, if not prohibit, migration into the state. The Court said: (page 629) "We do not doubt that the one year waiting period device is well suited to discourage the influx of poor families in need of assistance. . . . But the purpose of inhibiting migration of needy persons into the state is constitutionally impermissible."

And again, at page 631: "Thus, the purpose of deterring the in-migration of indigents cannot serve as a justification for the classifications created by the one-year waiting period, since that purpose is constitutionally impermissible."

The lower Court confused the decision of this Court which justifiably barred a statute ostensibly and deliberately enacted for the purpose of deterring interstate travel with the statute of the Master Management Resolu-

tion which has no affect on interstate travel but is solely a reasonable and necessary regulation, giving preference to residents, in an indivisible restrictive commodity such as housing.

The better view is that expressed by the Court in *Lane* v. *McGarry, supra*:

The Court said (page 564):

> "Before a determination of the constitutional validity of the classification can be made, it is necessary to establish the standard by which the classification is to be judged.
>
> The plaintiffs, relying upon *Shapiro* v. *Thompson*, 394 U.S. 618 (1969), argue that the standard is "a compelling state interest" because "the classification here touches on the fundamental right of interstate movement ***" 394 U.S. at 638. If, however, the classification does not "unreasonably burden or restrict this movement," or "penalize the exercise of that right," the compelling state interest standard does not apply.
>
> The standard then applicable is the traditional one that "equal protection is denied only if the classification is 'without any reasonable basis.'"
>
> While theoretically, any durational residential classification could be found to have an effect on the right to travel, i.e. some one or few persons might refrain from traveling because of it, such classification does not necessarily result in a penalty being imposed "upon the exercise of the constitutional right of interstate travel."

Petitioner had further pointed out to the court below that while *Shapiro* dealt with a divisible commodity which would "decrease" but would still be given to *all* recipients if new applicants were added to the list, public housing is so scarce that residents would be displaced altogether if waiting lists were unmanageable and private housing unavailable.

The Circuit Court merely commented that "the actual commodity involved in this case is time, a commodity which is readily divisible. Just as welfare payments may be spread more thinly over a greater number of recipients, so can waiting time be distributed among applicants for public housing" (.....).

This rationale ignores the *effect* of increasing "time" for each applicant. For a three-bedroom apartment, as previously shown, a resident would have to wait for ten years. If the non-residents were permitted to apply immediately, the number of applicants on any given day would greatly increase. Accordingly, the ten-year waiting period would become fifteen or twenty years. The housing needs of a low-income family could hardly be satisfied by the possibility of admission to a project at a point far off in the indefinite future. There can be little question that the addition of non-residents to the present New Rochelle lists would effectively prevent applicants from obtaining housing.

The decisions below represent a pyrrhic victory indeed, benefiting neither new arrivals nor community residents. It is unthinkable to characterize New Rochelle's attempt to prevent such a result as invidious. It is not only reasonably related to a proper local objective, but satisfies the "compelling interest" test as well.

CONCLUSION

For the foregoing reasons this Petition for a Writ of Certiorari should be granted.

Dated: New York, New York
August 4, 1971

Respectfully Submitted,

RICHARD L. BALTIMORE, JR.
Counsel for the New Rochelle Municipal Housing Authority and Ellsworth Wright

APPENDIX A

Decision of the United States Court of Appeals for the Second Circuit

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

Nos. 410, 411—September Term, 1970.
(Argued January 26, 1971 Decided May 12, 1971.)
Docket Nos. 35372, 35373

EARNESTINE KING, on her own behalf and on behalf of all others similarly situated,

Plaintiff-Respondent,

—and—

DOROTHY GREEN,

Intervenor,

—v.—

THE NEW ROCHELLE MUNICIPAL HOUSING AUTHORITY and ELLSWORTH WRIGHT, in his capacity as Chairman of the New Rochelle Municipal Housing Authority,

Defendants-Appellants.

GERTRUDE FRAZIER, on her own behalf and on behalf of all others similarly situated,

Plaintiff-Respondent,

—v.—

THE NEW ROCHELLE MUNICIPAL HOUSING AUTHORITY and ELLSWORTH WRIGHT, in his capacity as Chairman of the New Rochelle Municipal Housing Authority,

Defendants-Appellants.

Before:

WATERMAN, MOORE and FEINBERG,

Circuit Judges.

Decision of the United States Court of Appeals for the Second Circuit

Appeals from judgments entered in the United States District Court for the Southern District of New York, Wyatt, *J.*, holding unconstitutional a five-year durational residency requirement for admission to public housing and granting plaintiffs' prayers for injunctive and declaratory relief. Opinion below reported at 314 F. Supp. 427 (SDNY 1970).

Affirmed.

MARTIN A. SCHWARTZ, VICTOR J. RUBINO, The Legal Aid Society of Westchester County, White Plains, New York, *for Respondents;* Kenneth F. Phillips, Stephen P. Berzon, National Housing and Economic Development Law Project, Earl Warren Legal Institute, University of California Law School, Berkeley, California, *on the brief.*

RICHARD L. BALTIMORE, JR., New York City, *for New Rochelle Municipal Housing Authority and Ellsworth Wright.*

LOUIS J. LEFKOWITZ, Attorney General of New York, Samuel A. Hirshowitz, First Asst. Attorney General, Maria L. Marcus, Asst. Attorney General, *for Amicus Curiae State Commissioner, N. Y. State Division of Housing and Community Renewal.*

WATERMAN, *Circuit Judge*:

These cases, brought under 42 U.S.C. § 1983 and 28 U.S.C. § 1343(3) and (4), present the issue of whether the five-year durational residency requirement imposed by the

New Rochelle Municipal Housing Authority (the Authority) for admission to public housing violates the Equal Protection Clause of the Fourteenth Amendment.

The relevant facts are not complicated.[1] The appellant Authority is a public corporation, established by § 407 of the New York Public Housing Law. Its function is to build, maintain, and administer public housing facilities in New Rochelle. Funds were borrowed from the State of New York for construction purposes, and the Authority receives a subsidy from both the State and the City of New Rochelle. No funds are received from the federal government. New York law provides the general framework for eligibility requirements for admission to public housing and specifically allows each locality to set its own residence requirements.[2] Section 3(a) of the Master Management Resolution of the appellant Authority provides as part:

> (a) There shall be admitted to a state-aided project only families:
>
> 1. One of whose members is a resident of the City of New Rochelle for not less than five continuous years prior to the time of admission . . . or

---

[1] A more thorough discussion of the facts is found in Judge Wyatt's able opinion below, 314 F. Supp. 427 (SDNY 1970).

[2] Section 1627-3.1(a) of Title 9(c) of the Official Compilation of Codes, Rules and Regulations of the State of New York. Another defendant, Charles Urstadt, Commissioner of the New York State Division of Housing and Community Renewal, was granted judgment in his favor below on the ground that the above provision was "permissive only." The correctness of this dismissal is not challenged by the plaintiffs, and hence is not before us on this appeal. Nevertheless, because of the State's interest, the Commissioner was granted leave to file an *amicus* brief in the Court of Appeals.

> were residents of the City of New Rochelle for not less than five continuous years prior to leaving the City, and left the City due to the housing shortage because they were unable to find quarters in the City . . .

The Authority has interpreted the word "admission" in the above provision to mean "application for admission," so that a family must satisfy the five-year residency requirement before it may obtain a place at the end of the present waiting list of applicants.

The housing provided by the Authority is insufficient to meet the demands of the residents of New Rochelle, and at present there is a waiting list of such length that persons whose applications have already been accepted must wait an estimated three to ten years before an apartment becomes available in a desired size category. Thus, new residents of New Rochelle who desire public housing but do not satisfy the five-year residency requirement may be delayed from eight to fifteen years.

Plaintiff-respondent Earnestine King moved from North Carolina to New Rochelle in the middle of 1965 in order to be with her mother, who was undergoing an operation, and in the hope of obtaining employment. She is presently employed as a typist and, in addition, receives a monthly grant of partial public assistance. Respondent Gertrude Frazier moved to New Rochelle from Yonkers, New York, in June 1968. Respondent Dorothy Green, intervenor in the *King* case, moved from White Plains, New York, to New Rochelle in the fall of 1967 and is presently receiving public assistance. Respondents all support families, ranging in size from one to five children, and they have continuously resided in New Rochelle since they moved there. Each respondent has on several occasions requested an ap-

plication for public housing from the Authority; these requests have been refused, or, if an application was obtained, it was denied because the applicants failed to meet the five-year residency requirement.

The court below held that the five-year residency requirement is unconstitutional in light of *Shapiro* v. *Thompson*, 394 U.S. 618 (1969). We agree. In reaching our conclusion, we note the First Circuit's similar conclusion, in an able opinion by Judge Coffin, in *Cole* v. *Housing Authority of the City of Newport*, —— F.2d —— (1 Cir. 1970), *affirming* 312 F. Supp. 692 (D.R.I. 1970), a case which is in all respects indistinguishable from the instant case. Although we reach our result independently of the First Circuit, we adopt that court's analysis on the finer points involved and present in this opinion only the broad fabric of our approach.

In applying the Equal Protection Clause to the classification drawn by the Authority, we first decide the burden which must be met by the Authority in legitimizing the difference. The traditional test requires only that the classification be rationally related to a permissible goal.[3] However, if a fundamental personal right is involved, a classification can be upheld only if it furthers a compelling state interest.[4] Respondents assert that the residency requirement impinges upon their right to travel, which, under *Shapiro*, *supra*, at 634, is a fundamental personal right. The Authority counters that, because of the lengthy waiting lists involved, there is no deterrence to travel effected

---

[3] See, e.g., *Turner* v. *Fouche*, 396 U.S. 346, 362 (1970); *McGowan* v. *Maryland*, 366 U.S. 420, 425-426 (1961); *Ashbury Hospital* v. *Cass County*, 326 U.S. 207, 214 (1945).

[4] See, e.g., *Cipriano* v. *City of Houma*, 395 U.S., 701, 704 (1969); *Kramer* v. *Union Free School District*, 395 U.S. 621, 633 (1969).

by the five-year residency requirement. Without passing on this contention, we do find that the residency requirement penalizes respondents by adding an additional period of as much as five years to the time they must wait for public housing and that this penalty is imposed solely because they have recently exercised their right to travel.[5] Hence, "unless shown to be necessary to promote a *compelling* governmental interest, [the classification] is unconstitutional." *Shapiro, supra,* at 634 (emphasis in original).

The Authority would distinguish *Shapiro* on several grounds. It is urged first that *Shapiro* does not apply to intrastate travel and therefore the residency requirement does not affect any fundamental right of respondents Green and Frazier, both of whom moved to New Rochelle from cities within New York State. However, we do not believe that the use of the term "interstate travel" in *Shapiro* was anything more than a reflection of the state-wide enactments involved in that case. Indeed, the Supreme Court specifically refused to ascribe the source of the right to travel to a particular constitutional provision, 394 U.S. at 630 and n. 8, but relied on "our constitutional concepts of personal liberty," 394 U.S. at 629. It would be meaningless to describe the right to travel between states as a fundamental precept of personal liberty and not to acknowledge a correlative constitutional right to travel within a state.[6] Cf. *Valenciano* v. *Bateman,* 39 USLW 2523 (D.C.

---

[5] See *Cole* v. *Housing Authority of the City of Newport,* —— F.2d ——, —— (1 Cir. 1970) on the definition of "travel" as "migration with intent to settle and abide."

[6] Indeed, it appears inconsistent for the Authority to argue that the residency requirement should be upheld to exclude long-term residents of New York even if the requirement is un-

Ariz., 3/2/71). See *Kent* v. *Dulles*, 357 U.S. 116, 125-126 (1958); *Bell* v. *Maryland*, 378 U.S. 226, 255 (1964) (separate opinion of Douglas, *J.*); Note, Residence Requirements after *Shapiro* v. *Thompson*, 70 Colum. L. Rev. 134, 137-139 (1970).

The Authority also contends that *Shapiro*, which concerned a divisible commodity (welfare payments), is not applicable where the commodity is physically limited and indivisible as in the case of public housing. But respondents are not seeking *immediate* accommodations in public housing; they are asking only that they be granted equal treatment wth long-term residents in obtaining waiting-list priority. Thus, without passing on the relevance of the distinction urged by the Authority, we find that the actual commodity involved in this case is time, a commodity which is readily divisble. Just as welfare payments may be spread more thinly over a greater number of recipients, so can waiting time be distributed among applicants for public housing.

In analyzing the Authority's rationale for the five-year residency requirement, we find no compelling governmental interest. It is not contended that long-term residents are more needy than short-term residents, nor that public housing will be of more benefit to long-term residents. Indeed, the justification the Authority advances is similar to the justification the Court found unacceptable in *Shapiro*:

---

constitutional as to persons moving into New Rochelle from outside New York. The main thrust of the Authority's argument is that priority should be given to those with more permanent ties to the community. By this logic, respondents Frazier and Green, long-term New York residents, should have more equity in a state-aided public housing facility than the respondent King.

that each community should take care of its own first. Indeed, inasmuch as this goal is constitutionally impermissible under *Shapiro*, the lack of any other rationale for the residency requirement would invalidate that requirement under the traditional Equal Protection Clause test.[7]

In reaching our conclusion we emphasize that we are here deciding only the validity of a durational residency requirement for admission to public housing. As in *Shapiro* there is no contention here that a state or a local government may not require that applicants for public services be *bona fide* residents. Nor do we suggest any opinion as to the validity of other durational residency requirements, many of which assuredly do promote significant state interests.

Affirmed.

---

[7] See *supra* note 3 and accompanying text.

APPENDIX B

Relevant Statutes

The resolution of the New Rochelle Municipal Housing Authority adopted in the year 1949 insofar as pertinent reads as follows:

"RESOLUTION ESTABLISHING POLICIES AND STANDARDS TO GOVERN THE ADMINISTRATION OF STATE-AIDED PROJECTS OF THE NEW ROCHELLE MUNICIPAL HOUSING AUTHORITY"

It is hereby resolved by the members of the New Rochelle Municipal Housing Authority as follows:

SECTION 1—This resolution shall constitute the management program of the Authority with respect to all state-aided projects of this Authority, now in operation or which shall hereafter commence operation.

SECTION 2—DEFINITION:

* * * * *

SECTION 3—ELIGIBILITY FOR ADMISSION

"(a) There shall be admitted to a state-aided project only families:

1. One of whose members is a resident of the City of New Rochelle for not less than five continuous years prior to the time of admission (time spent in Military service by persons who were residents of the City when such service began shall be counted as resident in the city)/or were residents of the City of New Rochelle for not less than five continuous years prior to leaving the City, and left the City due to the housing shortgage because they were unable to find living quarters in the City. (Time spent in military service by persons who were resident of the City when such service began shall be counted as residence in the City)/or are site residents.

Relevant Statutes

2. Who are citizens of the United States of America.

3. Who conform to the occupancy standards as set forth in Section #7 of this resolution.

4. Whose annual income at the time of admission to the project falls within the income limits established for such family in such project, by schedule "A" attached hereto. Which income limits have been determined pursuant to subdivision #1 of Section #156 of the Public Housing Law."

SECTION 4—PREFERENCE FOR ADMISSION

"Preference for admission shall be granted in the following order to all eligible families in order of income starting with the lowest income of the family groups within each group #1 to #16.

1. All Present Site Residents.
2. All Former Site Residents.
3. to 9. Veteran categories.
10. (Non-Veteran) Family Group in Emergency.
11. (Non-Veteran Emergency Split Family.
12. (Non-Veteran) Emergency Double-up Family.
13. (Non-Veteran) Split Family.
14. (Non-Veteran) Doubled-up Family.
15. (Non-Veteran) Family living under substandard conditions.
16. (Non-Veteran) Family, tenants of the authority approved for transfer from other permanent projects in accordance with procedure established by the authority.

Relevant Statutes

Families with children living in transient hotels, rooming houses or furnished rooms, provided that they are living under unusually severe hardship, such families may be granted preference over groups #3 to #16, upon approval of the authority.

Families containing one or more persons suffering from a serious physical disability, residing under housing conditions constituting a hardship due to such a disability (provided that proof of such disability and hardship be submitted satisfactorily to the New Rochelle Municipal Housing Authority) may be granted preference over groups #3 to #16."

SECTION 5—INCOME ELIGIBILITY FOR CONTINUED OCCUPANCY

* * * * *

SECTION 6—RENT SCHEDULES

* * * * *

SECTION 7—OCCUPANCY STANDARDS

* * * * *

SECTIONS 8 THROUGH 13 DO NOT APPLY.

APPENDIX C

Decision by Wyatt, *D.J.* in *King* Case

WYATT, District Judge:

This is the decision of the action after trial without a jury. Trial by jury was not required nor demanded.

This action is by plaintiff King for injunctive relief and for a declaratory judgment. Dorothy Green by order has been permitted to intervene as an intervenor plaintiff.

There is a state aided public housing project in the City of New Rochelle.

This action involves the constitutionality of a requirement that to be eligible for admission to this project a family must have one member who has been a resident of the City of New Rochelle for not less than five continuous years prior to the time of admission.

Plaintiffs are citizens of New York.

The New Rochelle Municipal Housing Authority (the Authority) is a public corporation of five members established by Section 407 of the New York Public Housing Law. Defendant Wright is Chairman of the Authority.

Defendant Urstadt is Commissioner of Housing and Community Renewal of the State of New York (Public Housing Law § 11).

By orders filed May 11, 1970, the motion of Dorothy Green to intervene as plaintiff was granted without opposition; plaintiffs' motions that the action be maintained as a class action (Fed. R. Civ. P. 23(c)(1)) were denied; plaintiffs' motions for a preliminary injunction against defendant Urstadt and for the convening of a three-judge district court (28 U.S.C. §§ 2281, 2284) were denied; and the hearing on plaintiffs' motions for a preliminary injunction against defendants Authority and Wright were consolidated with the trial of the action on the merits (Fed. R. Civ. P. 65(a)(2)).

When the action was called for trial, a stipulation of facts was submitted for plaintiffs, defendant Authority, and defendant Wright. Defendant Urstadt did not appear at trial.

Decision by Wyatt, D.J. in King Case

There appears to be no dispute as to the facts.

Plaintiff King was born in Martinsville, Virginia, on January 5, 1942. In 1943, she moved to North Carolina where she resided until June, 1965. In the middle of June, 1965, she moved to New Rochelle in order to be with her mother, who was undergoing an operation, and in hope of obtaining employment.

Plaintiff King has resided in New Rochelle continuously since the middle of June, 1965. She presently resides at 140 Remington Place, New Rochelle, with her three year old son. She is presently employed as a typist by the New York State Department of Taxation and Finance. In addition to her salary, she receives a grant of partial assistance of $142.90 per month.

On February 27, 1970, plaintiff King telephoned the Authority in order to obtain an application for admission to the public housing maintained by the Authority. An employee of the Authority told her that she could not be given an application because she had not been a resident of New Rochelle for five years.

On March 2, 1970, plaintiff King went personally to the Authority's office and requested an application for public housing. This application was denied, because she had not been a resident of New Rochelle for five years.

Plaintiff Dorothy Green was born in Sumter, South Carolina, on December 23, 1941. In 1955 she moved to White Plains, New York, in the hope of finding employment and of going to school.

In the fall of 1967, plaintiff Green moved to New Rochelle and has resided there continuously since then. She presently resides at 488 North Avenue with her two children, aged two years and eight months, respectively. She receives a public assistance grant of $170 per month. This constitutes the only income for plaintiff and her children.

Decision by Wyatt, D.J. in King Case

In the summer of 1969, plaintiff Green went to the office of the Authority and requested an application for public housing. The request for an application was denied because she had not been a resident of New Rochelle for five years.

On March 18, 1970, plaintiff Green again requested an application for public housing from the Authority. This request was denied, because she had not been a resident of New Rochelle for five years.

Public housing facilities built by the Authority were built with money borrowed from the State of New York, through the New York State Division of Housing and Community Renewal (Public Housing Law § 70). The Authority receives a subsidy from the State (Public Housing Law § 73) and from the City of New Rochelle (Public Housing Law § 94). The Authority receives no funds from the federal government.

The housing provided by the Authority is insufficient to meet the demand by residents of New Rochelle. There is presently a waiting list of such length that persons with families of plaintiffs' size whose applications are accepted will havce to wait three years before an apartment becomes available.

Section 1627-3.1 of Title 9(c) of the Official Compilation of Codes, Rules and Regulations of the State of New York reads in part as follows:

> "Section 1627-3.1. Eligibility requirements in addition to income limitations
>
> In addition to income limitations, applicants must also meet the following requirements for admission:
>
> 2) Compliance with citizenship, residency and family composition requirements as stated in master management resolution adopted by authority. . . ."

Decision by Wyatt, D.J. in King Case

Part of the Master Management Resolution of the Authority is as follows:

> "Section 3—Eligibility for Admission
>
> (a) There shall be admitted to a state-aided project only families:
>
> 1. One of whose members is a resident of the City of New Rochelle for not less than five continuous years prior to the time of admission . . . or were residents of the City of New Rochelle for not less than five continuous years prior to leaving the City, and left the City due to the housing shortage because they were unable to find quarters in the City. . . ."

It will be noted that this Resolution provides for residence of five years prior to the time of *admission* to the public housing project. Apparently the Authority has interpreted the Resolution as requiring residence of five years before a family may make *application* for admission. The time spent on the waiting list of applicants is thus *after* satisfying the residence requirement and so is additional to the five years.

It is averred that the action is authorized by 42 U.S.C. § 1983 in that the plaintiffs are being deprived of constitutional rights, namely, the equal protection of the laws, freedom to travel, freedom of association, and due process of law.

The prayer for relief in substance is that defendants Authority and Wright be enjoined from enforcing the five year residence requirement of the Master Management Resolution; that defendant Urstadt be enjoined from enforcing 9(c) NYCRR § 1627-2.1(a); that plaintiffs be placed on the waiting list for admission to public housing maintained by the Authority in the same positions they would have held had their applications not been denied; and that a judgment be entered declaring that 9(c) NYCRR § 1627-3.1(a)

and the five year residence requirement of the Master Management Resolution are unconstitutional.

There is jurisdiction under 28 U.S.C. §§ 1343 (3) and (4), 2201 and 2202.[7]

The Residence Requirement

It is concluded that the five year residence requirement of the Authority's Master Management Resolution is unconstitutional, in light of *Shapiro* v. *Thompson*, 394 U.S. 618 (1969). In that case, the Supreme Court struck down a one year residence requirement for welfare benefits as an invidious discrimination against needy residents for less than one year who had exercised their constitutional right to interstate travel. Since the exercise of a constitutional right was thus penalized, the Court held that the residence requirement could be justified only by a *compelling* governmental interest (394 U.S. at 634). The Court rejected as insufficient the alleged state interest in preserving fiscal integrity, preventing fraud, facilitating budget planning, and encouraging early entry into the state's labor force (394 U.S. at 633-638).

Although the Court expressed no view on the validity of residence requirements other than for welfare benefits, it referred to "food, *shelter*, and other necessities of life" (394 U.S. at 627; emphasis added). Compare *Kirk* v. *Board of Regents*, 78 Cal. Rptr. 260, 266-267 (Sup. Ct. 1969), appeal dismissed, 396 U.S. 554 (1970). In a recent case, *Cole* v. *Newport Housing Authority*, ... F. Supp. ..... (Civ. No. 4265, D. R.I., April 16, 1970), the District Court for the District of Rhode Island invalidated a two year residence requirement for federally aided housing as violating both the federal low-rent housing program (42 U.S.C. § 1401) and the equal protection clause of the federal Constitution.

Defendants seek to distinguish *Shapiro* in a number of ways. First, it is said that the Master Management Reso-

lution's residence requirement does not deter *inter*state travel, since the residence required is in New Rochelle, not the State of New York generally. It is noted that plaintiff Green has moved within New York State, from White Plains to New Rochelle. But there appears to be no valid distinction between interstate and intrastate travel. No such distinction was drawn in the *Cole* case, although one of the plaintiffs in that case had moved within Rhode Island from Jamestown to Newport. The right to travel does not depend on the interstate nature of the travel. Although only interstate travel was involved in *Shapiro*, the Court ascribed the right to travel to the Constitution generally, not specifically to the Commerce Clause (394 U.S. at 630). To the extent that the right to travel derives from "our constitutional concepts of personal liberty" (394 U.S. at 629), it is not dependent on the crossing of state lines, but encompasses movement within a state as well. The Court said in *Kent* v. *Dulles*, 357 U.S. 116 (1958), a case involving a restriction on foreign travel: "Freedom of movement across frontiers in either direction, and *inside frontiers as well*, was a part of our heritage" (357 U.S. at 126; emphasis supplied). See *Bell* v. *Maryland*, 378 U.S. 226, 255 (1964) (separate opinion of Douglas, J.); Note, Residence Requirements after *Shapiro* v. *Thompson*, 70 Colum. L. Rev. 134, 130-139 (1970).

It is contended that the Authority's residence requirement does not deter travel, because the waiting list for public housing in New Rochelle is already so long that an additional five-year wait could not alter a decision to move to New Rochelle. This contention must be rejected, since the length of the waiting list could easily increase or decrease, while the five year residence requirement rmains constant. Persons could well discount the waiting list period, which is at best an estimated period, whereas they could well be deterred by a fixed five-year residence requirement. Moreover, *Shapiro* does not indicate that actual

deterrence need be shown (394 U.S. at 650, 675 (dissenting opinions of Warren, C.J. and Harlan, J.)). There is no indication that the Supreme Court meant to depart from its prior holdings that "any classification which serves to penalize the exercise of [a constitutional right] unless shown to be necessary to promote a *compelling* governmental interest is unconstitutional" (394 U.S. at 634, citing cases); cf. *Sherbert* v. *Verner*, 374 U.S. 398 (1963); *Crandall* v. *Nevada*, 73 U.S. 35, 46 (1967).

Defendants contend that unlike welfare payments public housing facilities are physically limited, and cannot be dividqed among all eligible claimants. This purported distinction ignores the thrust of plaintiffs' claim. Plaintiffs do not demand immediate admission to public housing, nor do they contest the Authority's undoubted power to establish a fair and orderly system of priorities (including the use of waiting lists) among qualified applicants. See *Holmes* v. *New York City Housing Authority*, 398 F.2d 262, 265 (2d Cir. 1968). What is challenged, rather, is the distinction made between applicants who have lived in New Rochelle for five years and those who have lived in New Rochelle for a shorter period. In light of *Shapiro*, such a distinction is impermissible, absent a compelling governmental interest.

No compelling interest has been suggested to support the discrimination. It is argued that if all residents are accorded an equal opportunity to apply for public housing, long-time residents whose present "life patterns" bind them to the community will suffer because the waiting lists will increase. This purported justification was rejected in *Shapiro*; the Court held impermissible a state's interest in protecting its long-time residents from a decrease in welfare benefits due to an influx of indigent newcomers (394 U.S. at 628); cf. *Toomer* v. *Witsell*, 334 U.S. 385 (1948).

Decision by Wyatt, D.J. in King Case

Defendant Urstadt

There is no *State* policy requiring a residence period for admission to public housing or a waiting period before residents may apply for state-aid public housing. In another action in this Court (70 Civ. 60), an affidavit has been submitted of an Associate Attorney in the Law Bureau of the New York State Division of Housing and Community Renewal. This affidavit states that the regulation embodied in 9(c) NYCRR § 1627-3.1(a) is "permissive only" and that each local authority is free to adopt any residence requirement or no residence requirement.

As noted in the opinion denying plaintiffs' motion for a preliminary injunction against defendant Urstadt, there is no real controversy between him and plaintiffs. Defendant Ursadt is entitled to judgment in his favor.

The foregoing includes the findings of fact and conclusions of law required by Fed. R. Civ. P. 52(a).

There should be judgment declaring that the five-year residence requirement of the Authority's Master Management Resolution is unconstitutional, enjoining defendants Authority and Wright from enforcing the five-year residence requirement of the Master Management Resolution, and directing defendants Authority and Wright to provide plaintiffs with applications for public housing maintained by the Authority. If upon the filing of the applications of plaintiffs, it appears that they meet the Authority's requirements for admission other than the residence requirement, then they are to be placed on the waiting list for housing maintained by the Authority in the position they would have held on such list had not their requests for applications been rejected.

Settle Order.

Dated: New York, New York
June 29, 1970

INZER B. WYATT
United States District Judge

APPENDIX D

Judgment and Order by Wyatt, *D.J.* in *King* Case

UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK

70 Civ. 917

EARNESTINE KING, on her own behalf and on behalf of all others similarly situated,

Plaintiff,

—against—

THE NEW ROCHELLE MUNICIPAL HOUSING AUTHORITY, ELLSWORTH WRIGHT, in his capacity as Chairman of the New Rochelle Municipal Housing Authority, and CHARLES J. URSTADT, in his capacity as Commissioner of the New York State Division of Housing and Community Renewal,

Defendants.

Plaintiff Earnestine King in the above-entitled action having moved this court for a declaratory judgment and preliminary and permanent injunction restraining defendants New Rochelle Municipal Housing Authority and Ellsworth Wright, Chairman of the New Rochelle Municipal Housing Authority, from enforcing the five year durational residency requirement set forth as a precondition to public housing eligibility in the Master Management Resolution of the New Rochelle Municipal Housing Authority, and defendant Charles J. Urstadt, Commissioner of the New York State Division of Housing and Community Renewal from enforcing Section 1627-3.1 of Title 9(c) of the Official Compilation of Codes, Rules and Regulations of the State of New York, and Plaintiff Dorothy Green having intervened

in this action by order of this court filed May 11, 1970 and having moved the court for the same relief as Plaintiff Earnestine King,

And, the court having consolidated Plaintiffs' motions for a preliminary injunction against defendants New Rochelle Municipal Housing Authority and Ellsworth wright with the trial of the action on the merits, now,

Upon the pleadings, affidavits, and briefs submitted on behalf of the parties, and after hearing Martin A. Schwartz, Esq. and Victor J. Rubino, Esq., of Counsel to The Legal Aid Society of Westchester County, in support of the plaintiffs herein and Richard L. Baltimore, Jr., Esq. in support of defendants New Rochelle Municipal Housing Authority and Ellsworth Wright, and Maria L. Marcus, Esq. of Counsel to Louis J. Lefkowitz, Attorney General of the State of New York, in support of defendant Urstadt, and the action having been tried on a stipulation of facts, and in accordance with the opinion of this court dated June 29, 1970, wherein this court found that the five year residency requirement imposed and enforced by defendants New Rochelle Municipal Housing Authority and Wright as a precondition to public housing eligibility violates plaintiffs' rights to the equal protection of the laws and the right to travel and on its face violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution and the right to travel, and the court having found that there is no real controversy between plaintiffs and defendant Urstadt, and the court having made its findings of fact and conclusions of law, it is

ORDERED, ADJUDGED and DECREED that the defendants New Rochelle Municipal Housing Authority and Wright, and their officers, agents, servants, employees, and attorneys and all persons in active concert and participating with them be and are hereby restrained and enjoined from imposing and enforcing durational residency requirements as a precondition to public housing eligibility, and it is further

Judgment and Order by Wyatt, D.J. in King Case

ORDERED, ADJUDGED and DECREED that defendants New Rochelle Municipal Housing Authority and Wright, and their officers, agents, servants and employees provide plaintiffs with applications for public housing maintained by the New Rochelle Municipal Housing Authority, and if upon the filing of the applications of plaintiffs it appears that they meet the New Rochelle Municipal Housing Authority's requirement for admssion other than the durational residency requirement, then plaintiffs are to be placed on the waiting list for public housing maintained by the New Rochelle Municipal Housing Authority in the position they would have held on such list had not their requests for applications been rejected, and it is further

ADJUDGED and DECREED, that plaintiffs herein are entitled to a declaratory judgment in this action pursuant to 28 U.S.C. 2201 and 2202 declaring the five year residency requirement of the defendant New Rochelle Municipal Housing Authority's Master Management Resolution unconstitutional, and it is further

ORDERED, ADJUDGED and DECREED that the complaint against defendant Urstadt be, and the same hereby is, dismissed on the merits.

Dated: July 10, 1970

INZER B. WYATT
United States District Judge

APPENDIX E

Notice of Appeal in *King* Case

UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK

70 Civ. 917

EARNESTINE KING, on her own behalf and on behalf of all others similarly situated,

Plaintiff,

—against—

THE NEW ROCHELLE MUNICIPAL HOUSING AUTHORITY, ELLSWORTH WRIGHT, in his capacity as Chairman of the New Rochelle Municipal Housing Authority, and CHARLES J. URSTADT, in his capacity as Commissioner of the New York State Division of Housing and Community Renewal,

Defendants.

Notice is hereby given that The New Rochelle Municipal Housing Authority and Ellsworth Wright, in his capacity as Chairman of The New Rochelle Municipal Housing Authority, as defendants above named, appeal to the United States Court of Appeals For The Second Circuit from the Judgment entered in this action July 10, 1970.

Dated: New York, New York
July 16, 1970

RICHARD L. BALTIMORE, JR.
Attorney for the defendants, The New Rochelle Municipal Housing Authority, and Ellsworth Wright, as Chairman of The New Rochelle Municipal Housing Authority

Notice of Appeal in King Case

To:

Legal Aid Society of Westchester County
Attorney for Plaintiff
23 Lawton Street
New Rochelle, New York
Martin A. Schwartz, of Counsel

Hon. Louis J. Lefkowitz
Attorney for Defendant, Charles J. Urstadt
80 Centre Street
New York, N. Y. 10013
Maria L. Marcus, Esq.

APPENDIX F

Decision by Wyatt, *D.J.* in *Frazier* Case

WYATT, District Judge:

This is the decision of the action after trial without a jury. Trial by jury was not required nor demanded.

The action by plaintiff Frazier is for injunctive relief, a declaratory judgment and damages. In a similar action, King v. The New Rochelle Municipal Housing Authority, et al., 70 Civ. 917, the decision being filed today is that judgment should be entered declaring that the five-year residence requirement for admission to public housing maintained by the New Rochelle Municipal Housing Authority (the Authority) is unconstitutional, that an injunction should issue against defendants Authority and Wright, and that judgment should be entered in favor of defendant Urstadt.

This action, like the King action, was tried on a stipulation of facts. The facts here as the same as those in King except that plaintiff Frazier was born in Yonkers, New York, and moved with her family to New Rochelle in June, 1968. She presently resides at 34 Sickles Avenue, New Rochelle, with her five children.

In September, 1968, plaintiff Frazier obtained an application, but this application was denied early in 1969 because plaintiff had not been a New Rochelle resident for five years.

In the summer of 1968, plaintiff Frazier was three times refused an application for public housing maintained by the Authority because she had not resided in New Rochelle for five years.

There is jurisdiction under 28 U.S.C. §§ 1343(3) and (4), 2201 and 2202.

The same findings of fact (except as indicated above) and the conclusions of law in the King action are made here (Fed. R. Civ. P. 52(a)).

For the reasons given in the opinion being filed today in the King action, it is concluded that the Authority's five-year residence requirement is unconstitutional.

There should be judgment in the case at bar declaring that the five-year residence requirement of the Authority's Master Management Resolution is unconstitutional, enjoining defendants Authority and Wright from enforcing the five year residence requirement of the Master Management Resolution, and directing defendants Authority and Wright to provide plaintiff Frazier with an application for public housing maintained by the Authority. If upon the filing of this application, it appears that plaintiff Frazier meets the Authority's requirements for admission other than the residence requirement, she is to be placed on the waiting list for housing maintained by the Authority in the position she would have held had not her requests for an application been rejected.

Plaintiff is not entitled to a money judgment, since no money damages have been proved.

There should be judgment in favor of defendant Urstadt.

Settle Order.

Dated: New York, New York
June 29, 1970

INZER B. WYATT
United States District Judge

APPENDIX G

Judgment and Order by Wyatt, *D.J.*, in *Frazier* Case

UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK

70 Civ. 60

GERTRUDE FRAZIER, on her own behalf and on behalf of all others similarly situated,

Plaintiff,

—against—

THE NEW ROCHELLE MUNICIPAL HOUSING AUTHORITY, ELLSWORTH WRIGHT, in his capacity as Chairman of the New Rochelle Municipal Housing Authority, and CHARLES J. URSTADT, in his capacity as Commissioner of the New York State Division of Housing and Community Renewal,

Defendants.

Plaintiff Gertrude Frazier in the above-entitled action having moved this Court for a declaratory judgment and preliminary and permanent injunction restraining defendants New Rochelle Municipal Housing Authority and Ellsworth Wright, Chairman of the New Rochelle Municipal Housing Authority from enforcing the five year durational residency requirement set forth as a precondition to public housing eligibility in the Master Management Resolution of the New Rochelle Municipal Housing Authority, and defendant Charles J. Urstadt, Commissioner of the New York State Division of Housing and Community Renewal from enforcing Section 1627-3.1 of Title 9(c) of the Official Compilation of Codes, Rules and Regulations of the State of New York,

Judgment and Order by Wyatt, D.J. in Frazier Case

And the Court having consolidated Plaintiff's motion for a preliminary injunction against defendants New Rochelle Municipal Housing Authority and Ellsworth Wright with the trial of the action on the merits, now,

Upon the pleadings, affidavits and briefs submitted on behalf of the parties, and after hearing Martin A. Schwartz, Esq. and Victor J. Rubino, Esq., of Counsel to The Legal Aid Society of Westchester County, in support of the plaintiff herein and Richard L. Baltimore, Jr., Esq. in support of defendants New Rochelle Municipal Housing Authority and Ellsworth Wright, and Maria L. Marcus, Esq., of Counsel to Louis J. Lefkowitz, Attorney General of the State of New York, in support of defendant Urstadt, and the action having been tried on a stipulation of facts and in accordance with the opinion of this Court dated June 29, 1970, wherein this Court found that the five year residency requirement imposed and enforced by defendants New Rochelle Municipal Housing Authority and Wright as a precondition to public housing eligibility violates plaintiff's rights to the equal protection of the laws and the right to travel and on its face violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution and the right to travel, and the Court having found that there is no real controversy between plaintiff and defendant Urstadt, and the Court having made its findings of fact and conclusions of law, it is

ORDERED, ADJUDGED and DECREED that the defendants New Rochelle Municipal Housing Authority and Wright and their officers, agents, servants, employees, and attorneys and all persons in active concert and participating with them be and are hereby restrained and enjoined from imposing and enforcing durational residency requirements as a precondition to public housing eligibility, and it is further

Judgment and Order by Wyatt, D.J. in Frazier Case

ORDERED, ADJUDGED and DECREED that defendants New Rochelle Municipal Housing Authority and Wright and their officers, agents, servants, and employees provide plaintiff with an application for public housing maintained by the New Rochelle Municipal Housing Authority, and if upon the filing of plaintiff's application, it appears that she meets the New Rochelle Municipal Housing Authority's requirements for admission other than the durational residency requirement, then plaintiff is to be placed on the waiting list for public housing maintained by the New Rochelle Municipal Housing Authority in the position she would have held on such list had not her request for an application been rejected, and it is further

ADJUDGED, and DECREED, that plaintiff herein is entitled to a declaratory judgment in this action pursuant to 28 U.S.C. 2201 and 2202 declaring the five year residency requirement of the defendant New Rochelle Municipal Housing Authority's Master Management Resolution unconstitutional, and it is further

ORDERED, ADJUDGED and DECREED that the complaint against defendant Urstadt be, and the same hereby is, dismissed on the merits.

Dated: July 10, 1970

INZER B. WYATT
United States District Judge

APPENDIX H

Notice of Appeal in *Frazier* Case

UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK

70 Civ. 60

GERTRUDE FRAZIER, on her own behalf and on behalf of all others similarly situated,

Plaintiff,

—against—

THE NEW ROCHELLE MUNICIPAL HOUSING AUTHORITY, ELLSWORTH WRIGHT, in his capacity as Chairman of the New Rochelle Municipal Housing Authority, and CHARLES J. URSTADT, in his capacity as Commissioner of the New York State Division of Housing and Community Renewal,

Defendants.

Notice is hereby given that The New Rochelle Municipal Housing Authority and Ellsworth Wright, in his capacity as Chairman of The New Rochelle Municipal Housing Authority, as defendants above named, appeal to the United States Court of Appeals For The Second Circuit from the Judgment entered in this action July 10, 1970.

Dated: New York, New York
July 16, 1970

RICHARD L. BALTIMORE, JR.
Attorney for the defendants, The New Rochelle Municipal Housing Authority, and Ellsworth Wright, as Chairman of The New Rochelle Municipal Housing Authority

Notice of Appeal in Frazier Case

To:

Legal Aid Society of Westchester County
Attorney for Plaintiff
23 Lawton Street
New Rochelle, New York
Martin A. Schwartz, of Counsel

Hon. Louis J. Lefkowitz
Attorney for Defendant, Charles J. Urstadt
80 Centre Street
New York, N. Y. 10013
Maria L. Marcus, Esq.